the condition invalidates the policy at its inception and the insurer, with knowledge of the facts, receives the premium and issues the policy he is estopped to deny the validity of the policy, notwithstanding that he cannot voluntarily waive by parol the condition in the policy. *Skinner* v. *Norman, supra; Spalding* v. *Ins. Co.*, 71 N. H. 441, 52 Atl. 858; *Welch* v. *Fire Ass'n*, 120 Wis. 456, 98 N. W. 227. To hold otherwise would allow the insurer to perpetrate a fraud upon the insured by receiving a benefit from the policy and then asserting that the policy was void *ab initio*.

The court, in the principal case, confuses the doctrine of waiver resting upon intention, with that of estoppel, whereby it would be inequitable to allow the insurer to assert the true state of facts. The cases cited in the principal case all fall within the first class of parol waivers, where the condition waived was an executory term of the policy.

LIMITATION OF ACTIONS—FOREIGN CORPORATIONS—STATUTORY PROVISIONS FOR SERVICE OF PROCESS.—An Oklahoma statute requires corporations to file copies of their articles of incorporation and to appoint resident agents upon whom service of process may be made. Another statute provides that in case no such agent is appointed, then valid service of process may be made on any superintendent of repairs, ticket agent, etc. The statute of limitations requires actions for personal injuries to be brought within 2 years from the date of injury. The R. Co. refused to comply with the first above mentioned statute; but did business within the state and had therein agents upon whom process could be served under the terms of the second above mentioned statute. Plaintiff was injured on Nov. 20, 1907. Action was begun on Dec. 17, 1909. The R. Co. pleaded the bar of the statute as a defense. *Held*, foreign corporation can not rely upon the statute as a defense. *Hale* v. *St. Louis, etc., Ry. Co.* (Okla.), 134 Pac. 949.

A foreign corporation can exercise those franchises peculiar to corporations within the limits of another state only by comity. *Western Union Tel.* v. *Mayer*, 28 Ohio St. 521; 6 THOMP. CORP. 7884. The way in which valid service of process may be made on such corporations is generally regulated by statute. But the right of a corporation to plead the statute of limitations as a defense is not so regulated; and is, therefore, governed by the general laws of the land. Some states, willfully overlooking the fact that a corporation may by its agents be a resident of other states than that of its domicile for the purpose of doing business and of suing and being sued, hold that a non-resident corporation is precluded from invoking the bar of the statute as a defense. *Olcott* v. *Tioga R. Co.*, 20 N. Y. 210, 75 Am. Dec. 393; *Robinson* v. *Imperial S. M Co.*, 5 Nev. 43; *Williams* v. *Met. St. R. Co.*, 68 Kan. 17, 74 Pac. 600, 104 Am. St. Rep. 377, 1 A. & E. Ann. Cas. 6, 64 L. R. A. 794. This holding is based on the inability of the corporation to change its domicile, the difference between domicile and residence being ignored. It is conceded, however, that when a foreign corporation has appointed a resident agent upon whom process may be served in compliance with the statute, then such corporation may set up the statute of limitations as

a defense. *Huss* v. *Cent., etc., R. Co.,* 66 Ala. 472. In many jurisdictions, when the corporation is doing business in the state and has managing agents therein upon whom process may be served, it can set up the statute as a defense. *Lawrence* v. *Ballou,* 50 Cal. 258; *King* v. *National Min., etc., Co.,* 4 Mont. 1, 1 Pac. 727; *Turcott* v. *Yazoo, etc., R. Co.,* 101 Tenn. 102, 45 S. W. 1067, 70 Am. St. Rep. 661, 40 L. R. A. 768; *McCabe* v. *Ill. Cent. R. Co.,* 4 McCrary 492, 13 Fed. 827; *Colonial, etc., Co.* v. *Northwest, etc., Co.,* 14 N. D. 147, 103 N. W. 915, 116 Am. St. Rep. 642. Moreover, when a corporation has failed to comply with statutory requirements similar to those in the principal case and where it has agents within the state upon whom valid service of process may be made—statutes similar to those in the principal case providing for such service—then such corporation is not precluded from invoking the bar of the statute as a defense. *Turcott* v. *Yazoo, etc., R. Co., supra; McCabe* v. *Ill. Cent. Ry. Co., supra.*

The basis of this holding is that the purpose of the statute of limitations is to prevent unnecessary delay in the bringing of actions; and that when the defendant, or any agent of his, has been within the jurisdiction of the courts so that service of process might be obtained upon such defendant or agent so that said defendant would be bound by a judgment *in personam,* then there is no excuse for the plaintiff's delay. The true test of the running of the statute is whether the defendant has been amenable to service of process during the whole of the statutory period. *Huss* v. *Cent, etc., R. Co., supra;* 6 THOMP. CORP. 7841. In the principal case the defendant has not placed himself in a position to cause the plaintiff loss should the bar of the statute intervene, for the latter could have brought his action at any time within the limited period; and, therefore, with all due respect to the Oklahoma Court, it would seem that the defendant should not have been denied the defense of the statute of limitations.

MASTER AND SERVANT—WHEN RELATION EXISTS.—Where an automobile company having sold a car sent a chauffeur with the purchaser to take it through the city and the plaintiff was injured by the chauffeur's negligence, it was *Held,* he is the servant of the defendant company and the said company is liable, notwithstanding the fact that the chauffeur had obeyed several orders from the new owner. *Dalrymple* v. *Covey Motor Car Co.* (Ore.), 135 Pac. 91.

The doctrine of *respondeat superior* rests on the power which the superior may rightfully exercise over his subordinates. It does not exist when there is no power of control, and the power of control is absent when the primary employer has no voice in the selection or retention of the subordinate. *Quinn* v. *Complete Electric Const. Co.,* 46 Fed. 506; WOOD, MASTER AND SERVANT, § 317. The rule is well established that the driver of a hired vehicle is the servant of the owner and not the hirer when the latter has only sufficient control to direct such servant where to go and what to do. *Quarman* v. *Burnett,* 6 M. & W. 499; *Crockett* v. *Calvert,* 8 Ind. 127; *Joslin* v. *Grand Rapids Ice Co.,* 50 Mich. 516, 15